IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

SHANE S. TAYLOR,

Respondent,

v.

OWNERS INSURANCE COMPANY,

Appellant.

DOCKET NUMBER WD79128

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: September 13, 2016

APPEAL FROM

The Circuit Court of Buchanan County, Missouri The Honorable Daniel F. Kellogg, Judge

JUDGES

Division Two: Karen King Mitchell, Presiding Judge, and Cynthia L. Martin and Gary D. Witt, Judges

ATTORNEYS

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Attorneys for Respondent,

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

SHANE S. TAYLOR,)	
Respondent,)	
v.	OPINION FILED: September 13, 2016	
OWNERS INSURANCE COMPANY,)	
Appellant.)	
WD70120		D1

WD79128 Buchanan County

Before Division Two Judges: Karen King Mitchell, Presiding Judge, and Cynthia L.

Martin and Gary D. Witt, Judges

Shane Taylor filed a petition for declaratory judgment seeking a declaration that he is entitled to uninsured motorist coverage (UM coverage) from the insurance policy of his mother, Judy Taylor (Mother's Policy, or the Policy), issued by Owners Insurance Company (Owners). Owners appeals the trial court's grant of summary judgment in favor of Taylor, and the denial of its own motion for summary judgment. Because Mother's Policy did not provide UM coverage to Taylor, we reverse. Moreover, because both parties concede that identical issues govern the motions for summary judgment filed by both sides and agree as to all facts on which judgment was sought by both parties, no purpose would be served by remand for reconsideration of Owners's motion for summary judgment.

REVERSED; JUDGMENT ENTERED.

Division Two holds:

1. Generally, the denial of a motion for summary judgment is not a final judgment that may be reviewed on appeal. However, when the merits of that motion are inextricably intertwined with the issues in the appeal of a summary judgment in favor of another party, then that denial may be reviewable. Here, the motions for summary judgment rely on the application of the same law to stipulated facts in order to answer two discrete questions: whether Taylor has UM coverage under Mother's Policy, and, if so, whether such coverage

- is subject to an exclusion limiting coverage to \$25,000 per vehicle. The motions are inextricably intertwined and we review both the grant and denial of summary judgment.
- 2. The key issue before this court is whether the Policy is ambiguous. When there is ambiguity in an insurance policy, the court must interpret the policy in favor of the insured. Courts will not, however, create ambiguity in an otherwise unambiguous policy. The general rules for interpretation of other contracts apply to insurance contracts as well. The key is whether the contract language is ambiguous or unambiguous. Where insurance policies are unambiguous, they will be enforced as written. Whether an insurance policy is ambiguous is a question of law.
- 3. Policy language that extends UM coverage only to relatives that do not own an automobile is clear and unambiguous, and not contrary to public policy.
- 4. Where the coverage section of the UM endorsement provides UM coverage to the named insured shown in the Declarations, as well as "to a relative who does not own an automobile," and Taylor lives with Mother, but owns no fewer than three automobiles, each of which is insured by policies in Taylor's name, the Policy unambiguously excludes Taylor from coverage.
- 5. If the coverage section of the policy explicitly and unambiguously excludes a particular individual or event from coverage, then allegedly ambiguous language located in other subsections, which is used to calculate or to limit the extent of liability, cannot be read to create coverage where none exists. Reading the contract as a whole, the coverage section excludes certain risks from coverage completely while other provisions limit the extent of Owners's liability when the risk is covered. The provisions used to calculate or limit the extent of Owners's liability are only relevant when the occurrence is covered by the Policy. Because Taylor was not covered by the Policy, the remaining provisions limiting liability are irrelevant.
- 6. An exclusion provision in an insurance policy, by definition, excludes risk that would otherwise be covered. Similarly, a limits of liability provision sets a limit to the extent of liability when the risk is covered. A reasonable layperson would not read this exclusionary or limiting language as somehow conferring coverage where it is expressly not provided for in the coverage subsection.
- 7. Because the two summary judgment motions are based on the same facts and law, no purpose would be served by remand. The trial court erred in failing to grant summary judgment to Owners, and this court enters the judgment the trial court should have entered.

Opinion by: Karen King Mitchell, Presiding Judge September 13, 2016

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